TELEGRAM : CEGCANAL
Website : www.cestat.gov.in

REGISTERED / AD
Email : delhi@cestat.gov.in

CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
PRINCIPAL BENCH, WEST BLOCK No.2, R.K.PURAM, NEW DELHI - 110066
EXCISE APPEAL BRANCH

Appeal No. E/1419/2002-1420/2002 ,1147-1148/2002,2981,2983/2002 & 4875/2004 Date 27/02/2009

Assistant Registrar
C.E.S.T.A.T, New Delhi

To :
ELLORA MECHANICAL PRODUCTS (P)LTD,
B-154,SECTOR-6,NOIDA (G.B.NAGAR) UP

ELLORA MECHANICAL PRODUCTS (P)LTD Appellant
Vs
C.C.E. NOIDA Respondent

I am directed to transmit herewith a certified copy of **Final order No.** 175-181/2009- **EX[DB]** dated 11-2-09

passed by the Tribunal under Section 35-C(1)of Central Excises Act, 1944

Assistant Registrar
(Excise Appeal Branch)

Copy to :
1. Respondent
   C.C.E. NOIDA
   B-123, SECTOR 5, NOIDA.
2. Adv. / Consult
   SH. B.L. NARASIMHAN, ADV,
   B-6/10, S.J. ENCLAVE,
   N. DELHI-29
3 S.D.R
4 ~~J.C.D.R.~~
5 Bar association, CESTAT, New Delhi
6 M/s. Deeparchi Publications, M-93, Marg. 46, Saket, New Delhi 110017
7 M/s Centax Publictions (P) Ltd., 1512-B, Bhishm Pitamah marg, Opp. ICICI Bank of Defence Colony, New - 3
8 Excise & Customs cases, B-37, Sector -1, NOIDA - 201301 Gautam Budh Nagar, (U.P.)
9 Raghuraman's 44-B, Regal Flat,Shipra Suncity, Indirapuram - 201010,Ghaziabad, DT, U.P.
10 Nidheshak publications, I.P.Estate, new Delhi
11 Taxmann Allied Service Pvt Ltd., 21/35, West Punjabi Bagh, New Delhi - 110026
12 Commercial Laws of India Pvt Ltd Post Bag No. 1033, No.70(Old No. 88), Thyagaraya Road, T. Nagar,Chennai
13 Taxindiaonline.com Pvt.Ltd, B-XI/8183,Vasant Kunj, New Delhi - 110070
14 Easy Service Tax Online Dot Com Pvt.Ltd.407A,Iscon Mall,Above Star India Bazar,Satellite Road,Ahmedabad-15
15 Office Copy
16 Guard file
17. SH.J.B.AGGARWAL,C/O M/S KUBER INDS.
18. KUWER INDUSTRIES LTD
    A-71-72,G.B. NAGAR-UP
19. MR.R.K.AGGARWAL,
    A-18,BLOCK B-1,MOHAN CO-OPERATIVE
    INDL. ESTATE,MATHURA
    ROAD,BADARPUR,N.DELHI-44
20. MR.VIKAS AGGARWAL, C/O. S.NO.19,
21. M/S.ELLORA MECHANICAL PRODUCTS (P) LTD.,
    B-154, SEC.-6, NOIDA DISTT. G.B.NAGAR(U.P.)

Assistant Registrar
(Excise Appeal Branch)

IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL, R.K. PURAM, W.B. NO.2, PRINCIPAL BENCH NEW DELHI, COURT NO.I

Excise Appeal No. 2981 & 2983 of 2002, 4875 of 2004

1147-48 & 1419-20 of 2002

[Arising out of Order-in-Original No. 19/Commissioner/01 O-I-A. No. 218-CE/APPL/NOIDA/04 dated 28.7.2004 passed by the Commissioner (Appeals) Central Excise, Noida]

Date of Hearing/Decision : 11.02.2009

For approval and signature:

Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Judicial)

1.	Whether Press Reporters may be allowed to see the Order for publication as per Rule 27 of the CESTAT (Procedure) Rules, 1982.	
2	Whether it should be released under Rule 27 of the CESTAT (Procedure) Rules, 1982 for publication in any authoritative report or not?	No.
3	Whether Their Lordships wish to see the fair copy of the Order?	
4	Whether Order is to be circulated to the Departmental authorities?	Yes

M/s Ellora Mechanical Products Pvt. Ltd., & Others — Appellant
[Rep. by Mr. B.L. Narasimhan, Advocate]

Versus

CCE, Noida — Respondent
[Rep. by Mr. B.S. Suhag, DR]

CORAM: Hon'ble Mr. M. Veeraiyan, Member (Technical)
Hon'ble Mr. P.K. Das, Member (Technical)

FINAL Order 175-181/09-EX

Per P.K. Das

Common issue involved in these appeals and, therefore, all are being taken together up for disposal.

2. These appeals have been taken up for hearing in pursuance of the Order dated 16.11.2007 passed by the Hon'ble Supreme Court in Civil Appeal No. 3814-3817 of 2005 in the matter of Commissioner of Customs & Central Excise vs.

Kuwer Industries Ltd., & Another. For the purpose of appreciation, the relevant portion of the said order is re-produced below:-

"On 15th July 2005, this Court had issued notice limited to the question as to why the matter be not remanded back to the Tribunal. The said order reads thus:

"It is stated by learned counsel appearing on behalf of the appellant that the decision in Meltex (I) Pvt. Ltd., vs. Commnr. Of Central Excise, New Delhi 2004 (165) ELT 129 (SC) was distinguishable. In that case the Court was of the view that the burden on the Department to prove that a new and distinct product had come in existence had not been discharged by the Department. In this case, according to the appellant, since the issue was not raised at any stage the Department was not given any opportunity to prove that the product in question was in fact being 'manufactured' within the definition of the word in the Central Excise Act.

Delay condoned.

Issue notice limited to the question as to why the matter should not be remanded back to the Tribunal for disposal".

Although counsel for the respondents insists that the point is covered by the judgment of this Court in the case of Meltex (I) Pvt. Ltd. (supra), but, in view of the distinction pointed out in the order dated 15th July 2005, we feel that it would be in the interest of justice that the case is remitted to the Tribunal for fresh decision in accordance with law. Ordered accordingly. The impugned order is set aside.

All contentions are left open.

Anything stated in this order be not taken as an expression of opinion by this Court.

The appeals are allowed accordingly with no order as to costs".

3. By the above order, the Hon,ble Supreme Court set aside the order No. 832-835/04 dated 16.12.2004 of the Tribunal.

4. Further, by order dated 28.01.2008 in Civil Appeal No. 2727 of 2007, the Hon'ble Supreme Court in the case of CCE, Noida vs. Ellora Mechanical

Products Pvt. Ltd., set aside the Tribunal's order No. 103/2005 dated 04.02.2005. The relevant portion of the said order is re-produced below:-

> "Heard learned counsel for this parties.
>
> In terms of our Order dated 16.11.2007 in the case of Commissioner of Customs & Central Excise vs. Kuner Industries Ltd. Anr. In C.A. Nos. 3814-3817 of 2005 the case is remitted to the Tribunal for fresh decision in accordance with law. Ordered accordingly. The impugned order is set aside.
>
> All contentions are left open.
>
> Anything stated in this order be not taken as an expression of opinion by this Court.
>
> The appeal is allowed accordingly with no order as to costs".

5. Learned Advocate submits that the Tribunal vide final order No. 132-133/08-EX. Dated 07.04.2008 allowed the Appeal No. 2981-2983/2002. In view of the above decision of the Hon'ble Supreme Court, and the application filed by the Revenue, the Tribunal vide Misc. Order No. 722-23/08-Ex dated 08.08.2008 recalled the earlier order and restored the said appeals in its original numbers.

6. After hearing both the sides and on perusal of the records, we find that the Hon'ble Supreme Court remitted the matter to the Tribunal to decide the matter after considering the decision of the Hon'ble Supreme Court in the case of Metlex (I) Pvt. Ltd., vs. CCE -2004 (165) ELT 129 (SC). It is revealed from the above decision that the Revenue contended that they have not given any opportunity to prove that the goods in question was in fact being manufactured within the definition of the Central Excise Act. It is contended by both the parties that this issue was not dealt before the lower authorities. In view of that, we set aside the impugned orders and remand back the case to the original authority to decide the matter afresh after considering the decision of the Hon'ble Supreme Court as above. All the appeals are allowed by way of remand.

7. In this context, it is pointed out that in some cases, the Deputy Commissioner decided the demand of duty and the classification of goods was decided by the Commissioner. We find that dispute is about excisability of the goods, which would be decided by the Commissioner of Central Excise. Accordingly we remand the matter to the Commissioner to decide all the matters. All issues are kept open.

[Dictated and pronounced in the open Court]

[M. Veeraiyan]
Member (Technical)

[P.K. [illegible]]
Member (Judicial)

[Pant]